

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

TIMOTHY MARVIN BISHOP,)
Plaintiff,)
v.) Case No. CIV-13-171-D
)
THE STATE OF OKLAHOMA, ex rel.,)
THE OKLAHOMA DEPARTMENT OF)
HUMAN SERVICES, an agency of the)
State of Oklahoma, et al,)
Defendants.)

PLAINTIFF'S RESPONSE TO MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTIONS FOR SUMMARY
JUDGMENT OF DEFENDANTS KRISTEN KYLE-MOON AND ROBYN
SINGLETON SZUBA

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COMES NOW the Plaintiff for his Response to Motion for Leave to Submit Supplemental Authority in Support of Motions for Summary Judgment of Defendants Kristen Kyle-Moon and Robyn Singleton Szuba filed herein by the Defendants (Doc. No. 159), and would show to the Court that the motion of the Defendants must fail because the Motion is contrary to Court Rule and contrary to fact.

The Defendants cite LCvR 7.1 in support of their motion. Subsection (i) of this Rule specifically addresses Reply and Supplemental Briefs. In part, this subsection specifically provides “*Reply briefs shall not be used to reargue the points and authorities included in the opening brief*”. In the instant motion of the Defendants, they seek to have the Court hear further argument from the Defendants on questions presented in their previously filed Motions for Summary Judgment (Doc. Nos. 140 and 141). Rules in the nature of LCvR 7.1 (i) serve to bring a conclusion to the motion practice of the parties. Here, the Defendants have fully argued the points and authorities of their motion at the time that it was filed. No facts pressed by their Motions for Summary Judgment have changed. The presentation of further argument under the guise of supplementation is prohibited by the language of LCvR 7.1 (i). The present Motion of the Defendants is contrary to rule and should be denied by the Court.

Defendants seek to present supplemental authority in their motion with the case they include as Exhibit 1 (Memorandum Opinion and Order in *Gutteridge v. State of Oklahoma, ex rel. Oklahoma Department of Human Services*, CIV-13-816-C, W.D. Okla.). In particular, the issue of whether that case presented facts sufficient to shock the conscience of the court for purposes of the application of the qualified immunity doctrine was the basis for the ruling by that Court in favor of those defendants. Apparently, the

Defendants take the position that the multiple rapes of a minor child while in the custody of a foster parent under the supervision of these Defendants is not sufficient to be “shocking”. Such a position by the Defendants is, in and of itself, shocking. The facts of the *Gutteridge* case are inapposite to the facts of the instant case and have no place as authority to support the Defendants’ Motions for Summary Judgment.

WHEREFORE, Plaintiff prays that the Court deny the Motion for Leave to Submit Supplemental Authority in Support of Motions for Summary Judgment of Defendants Kristen Kyle-Moon and Robyn Singleton Szuba.

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CERTIFICATE OF SERVICE

I certify that on the 25th day of October, I electronically transmitted this document to the Clerk of the Court using the ECF System for filing. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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